

MAR 15 2006

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

ALBERT E. DAWSON,

Petitioner - Appellant,

v.

STATE OF NEVADA; et al.,

Respondents - Appellees.

No. 04-16305

D.C. No. CV-01-00041-ECR/VPC

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Nevada
Edward C. Reed, District Judge, Presiding

Submitted March 8, 2006^{**}

Before: CANBY, BEEZER, and KOZINSKI, Circuit Judges.

Nevada state prisoner Albert E. Dawson appeals from the district court's judgment denying his 28 U.S.C. § 2254 habeas corpus petition challenging his 1991 guilty plea conviction for first degree murder, burglary, battery with use of a

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

deadly weapon, and robbery with use of a deadly weapon. We have jurisdiction pursuant to 28 U.S.C. § 2253, and we affirm.

Dawson contends that the district court should have offered him the opportunity to stay his mixed habeas petition so that he could return to state court to exhaust his unexhausted claims. We review for abuse of discretion the district court's decision to grant or deny a "stay and abeyance" of a habeas petition. *See Rhines v. Weber*, 544 U.S. 269, 125 S. Ct. 1528, 1534-35 (2005).

No abuse of discretion occurred here. After determining that Dawson's habeas petition was mixed, the district court gave him the opportunity to exercise his options under *Rose v. Lundy*, 455 U.S. 509, 510 (1982), and offered Dawson an administrative closure procedure that was the equivalent of a stay and abeyance. Dawson rejected that procedure and knowingly and voluntarily elected to abandon the unexhausted claims in order to proceed with the exhausted claims.

Dawson's request to broaden the certificate of appealability is denied as to his remaining claims because he has not made a "substantial showing of the denial of a constitutional right." *See* 28 U.S.C. § 2253(c)(2); 9th Cir. R. 22-1(e).

AFFIRMED.